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Court : Kolkata

Decided On : Jan-16-1914

Reported in : 25Ind.Cas.438

Judge : Coxe and ;D. Chatterjee, JJ.

Appellant : Gur Prosad Singh and ors.

Respondent : Gur Prosad Lal and ors.

Judgement :

1. These are appeals against the decisions of the District Judge of Bhagalpore confirming the decisions of the Munsif of Jamui. The effect of the decisions is to dismiss the plaintiffs' suits both for misjoinder of parties and for misjoinder of causes of action. A preliminary objection; is taken that no appeal lies in these cases; and this is not contested. The appeals must, therefore, be dismissed with costs. We assess the hearing fee at Rs. 8 in each case in which appearance is made.

2. A petition has been put in that the orders: may be revised. Under Order I, Rule 9, the Court has no power to direct a suit to be defeated by reason of the misjoinder or nonjoinder of parties and we think that in the circumstances of this case it was the duty of the Court to take action under Order I, Rule 2, and Order II, Rule 6. It was stated in the plaint that the collection of rent was joint: and this was not traversed in the written statement. But considering the difficulties which have

been described in the judgment of the Munsif, we think that the plaintiff certainly should not have brought one suit for all the reliefs claimed in the case. Each suit related to three different estates in two of which one of the plaintiffs had no interest.

3. We think, therefore, the proper order to pass is that the plaintiff shall pay the defend-ant by the 18th February 1914 all costs incurred by the latter up to date, including the costs of the appeals, with the exception of the Court-fee on the plaints and the applications for rule irrespective of the final result. Then separate trials will be held, one set for the rent due to the first plaintiff in respect of Patti No. 1, one set for the rent due to the first plaintiff in respect of Patti No. 4 and one set for the rent due to both the plaintiffs with respect to Mouza Ambari Khurd. The plaints will be amended so as to show what lands are included within each of these estates. If the costs are not paid within the time specified, these rules will stand discharged with costs. We assess the hearing fee at half a gold mohur in each Rule.

4. Let the record be sent down at once.